IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

MFA.No. 445 of 2000(A)

O.P(MV).NO.569/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM.
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APPELLANT/PETITIONER:

MOOSA, S/O. MUHAMMED, AGED 55 YEARS,
VATTARA HOUSE, PANAMANNA POST,
KOTHAKURISSI VIA., OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR,
SRI.V.A.AJAI KUMAR,
SRI.T. THANKAM,
SRI.M.P.SABARI GIRISAN.

RESPONDENTS/RESPONDENTS:

***1. SIVASANKARAN, S/O. JANAKI AMMA, (DELETED)**
AGE NOT KNOWN, MARIYIL HOUSE,
PAVUKKONAM POST, ANANGANADI,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. MOHANAN, S/O. CHAMI, AGED 27 YEARS,
PAZHAYANNAZHIPARAMBU HOUSE,
KOTHAKURUSSI POST, CHERUMBATTAKAVU,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

M.F.A. NO. 445/2000:

**3. THE UNITED INDIA INSURANCE COMPANY LTD.,
FAIZAL BUILDING, MAIN ROAD, OTTAPALAM.**

***THE NAME OF IST RESPONDENT IS DELETED FROM PARTY ARRAY AT APPELLANT'S RISK VIDE ORDER DTD. 02/02/07 ON M.F.A.**

BY ADV. SMT.K.C.BEENA.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 445 of 2000

Dated this the 26th day of June, 2007

Judgment

Koshy, J.

Appellant/Petitioner met with an accident on 30.7.1995 by which he sustained serious injuries including fracture of right clavicle. He claimed compensation of Rupees One lakh, but, tribunal awarded only Rs.20,156/-. The only dispute is regarding quantum of compensation.

2. According to the petitioner, he was running a provision shop at the time of accident. Ext.A9 series and Ext.A10 series show that he had paid fees for sealing weights and measures and professional tax evidencing that he was running a provision shop. Even though it was claimed that he was earning Rs.300/- per day, in the absence of any data, the tribunal has taken monthly wages as Rs.1,500/- for computation of compensation. In the absence of any evidence, we are not inclined to change the same. The claimant was aged 50. Taking guidance from the second schedule, we take 11 as the multiplier. (See: Three member Bench decision of the Supreme Court in Smt. Supe Dei and others v. National Insurance Co.

Ltd. (JT 2002 (Suppl.1) SC 451). The tribunal did not grant compensation in a scientific manner. By Ext.A6 certificate, doctor assessed disability at 9%. Hence, compensation payable will be Rs.1500 x 12 x 11 x 9 = 100 Rs.17,820/-. After deducting Rs.10,000/- awarded by the tribunal, balance compensation payable for disability and injury and loss of earning capacity will be Rs.7,820/-. There was collar bone fracture and other injuries including lacerated wounds, only Rs.5,000/- was granted for pain and suffering. We are of the opinion that another Rs.2,000/- more should be granted for pain and suffering. Even though it is argued that compensation granted under other heads are very low, in the absence of clear evidence, we are not enhancing the same. The additional amount of Rs.9,820/- should be deposited by the third respondent with 8% interest from the date of application till its deposit. Appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.445/2000

JUDGMENT

Dated:26th June, 2007